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Cavalier TELEPHONE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

*BY HAND DELIVERY*

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *WC Docket No. 02-359, In the Matter of the Petition of Cavalier Telephone, LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Arbitration*

Dear Ms. Dortch:

Cavalier Telephone, LLC ("Cavalier") respectfully submits the enclosed Reply Brief of Cavalier Telephone, LLC in the referenced matter.

Please contact me at 804.422.4517 if you have any questions.

Sincerely,

Stephen T. Perkins
*Counsel for Petitioner*

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**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Petition of Cavalier Telephone, LLC | ) | WC Docket No. 02-359 |
| Pursuant to Section 252(e)(5) of the | ) | |
| Communications Act for Preemption | ) | |
| of the Jurisdiction of the Virginia State | ) | |
| Corporation Commission Regarding | ) | |
| Interconnection Disputes with Verizon | ) | |
| Virginia, Inc. and for Arbitration | ) | |

# REPLY BRIEF OF CAVALIER TELEPHONE, LLC

Pursuant to the *Procedures Established for Arbitration of an Interconnection Agreement Between Verizon and Cavalier*, WC Docket No. 02-359, Public Notice (rel. August 25, 2003), petitioner, Cavalier Telephone, LLC ("Cavalier"), in reply to the Post-Hearing Brief of Verizon Virginia Inc. ("Verizon Brief"), respectfully submits this Reply Brief. Cavalier requests that the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("Commission") adopt the language set forth in Cavalier's October 24, 2003 Notification of Subsequent Final Offers ("NSFO"), as subsequently modified, by the for the reasons more specifically set forth both in Cavalier's Post-Hearing Brief and below.

## Issue C2: Network Rearrangements

Cavalier continues to urge the Bureau to rule that Verizon should compensate Cavalier whenever Verizon's network rearrangements require Cavalier to expend its resources as a consequence. In conjunction, or in the alternative, Cavalier urges the Bureau to direct Verizon, per the testimony of Don Albert and Peter D'Amico, to allow

Cavalier in such events the opportunity to select its point(s) of interconnection (POIs), including its existing POIs, with all transport costs to the new tandems being borne by Verizon. **<u>In that event, however, the Bureau should fashion its own language to cover this contingency, as Verizon has thus far failed to amend its Final Offer to reflect the proposal articulated at arbitration by Messrs. Albert and D'Amico.</u>**

For the reasons explained in Cavalier's Brief, Cavalier advocates that Verizon relieve Cavalier of the downstream costs and consequences of Verizon's network rearrangements. While Mr. Albert[1] stated at arbitration that Verizon did not make out-of-pocket cash payments to independent telephone companies (ITCs), he could not deny that Verizon has absorbed the downstream network rearrangement costs of independent telephone companies – by actually performing the work on behalf of the other carrier.[2] Moreover, Mr, D'Amico of Verizon could not say that the benefits of any particular network rearrangement were worth the cost to the CLECs,[3] or even that such costs are reasonable.[4] Even Mr. Albert, who purported to know the reasonableness of CLECs' costs in the event of a re-homing before admitting he really did not know,[5] conceded that a CLEC's costs in such event could "easily be in the several hundred thousand dollars."[6] These costs are simply too exorbitant for Cavalier to bear, and Verizon should be responsible for them.

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[1]Unfortunately, the Bureau and Cavalier will not know for certain, as Verizon flouted Cavalier's discovery request that sought information from George Bader, the custodian of Verizon's interconnection agreements. Instead, Mr. Albert of Verizon provided hearsay evidence about a conversation he supposedly had with Bader. Tr. at p. 14, l. 1 to p. 15, l. 12. The Bureau should either discount this testimony altogether or, as Staff implied at arbitration, give Mr. Albert's spin of his conversation with Mr. Bader very limited weight.
[2] Tr. at p. 16, l. 13 to p. 17, l. 3.
[3] Tr. at p. 17, ll. 11-16; at p. 18, l. 18 to p. 19, l. 2.
[4] Tr. at p. 26, l. 13 to p. 27, l. 7; *see also* Tr. at p. 28, l. 17 to p. 29, l. 4.
[5] Tr. at p. 28, l. 17 to p. 29, l. 4.
[6] Tr. at p. 29, l. 11 to p. 30, l. 6.

Alternatively, or in conjunction with Cavalicr's proposal, the next most reasonable course would be for the Bureau to direct Verizon to provide free transport between Cavalier's POIs and Verizon's new tandems, as described by Verizon's witnesses, Mr. D'Amico and Mr. Albert – *a proposal that has yet to be formally stated in any Verizon Final Offer.* As Mr. D'Amico explained, "between the POI and the new tandem being added, if Cavalier chose to have a POI that wasn't at that tandem, <u>then Verizon would be responsible for that transport to get to that particular tandem</u>. . . .They [Cavalier] have a choice. In other words, if they have a POI at Tandem A and then Tandem B is established, they have a choice to establish a POI at Tandem B or they can continue to have their POI, their point of interconnection at Tandem A, and then although there would still be trunking required to that tandem, . . . <u>the facility cost would be on Verizon's side of the point of interconnection, and therefore Verizon would be responsible for that</u>."[7] "The tandem rate is the same, whether scenario A or B."[8]

Mr. Albert confirmed that Verizon would assume these costs: "So we would put in the transport facilities between, say, the first tandem and the second tandem, and they would continue to pay reciprocal compensation at the same, you know, approved in-place rates that had previously existed. . . .[T]he transport facilities, those would be Verizon's costs and there would not be – on our side of the POI, our physical facilities, and there's not a charge to the CLEC for those."[9] Whether Cavalier has a single or multiple POIs would not affect Verizon's assumption of these transport costs.[10] Moreover, should

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[7] Tr. at p. 30, l. 17 to p. 32, l. 6 (emphasis added).
[8] Tr. at p. 40, ll. 6-7.
[9] Tr. at p. 32, ll. 11 to p. 33, l. 3. Verizon admitted it had changed its stance on this issue, arising out of Verizon's decision to abandon its "GRIPs" and "VGRIPs" positions. Tr. at p. 35, ll. 2-7 & at p. 43, ll. 11-14.
[10] Tr. at p. 44, ll. 8-13.

Cavalier decide to interconnect at the end office instead of at the tandem, Cavalier need only pay the lower end office rate instead of the tandem rate.[11]

As clear as Messrs. Albert and D'Amico were in their testimony, however, Verizon has not provided any correspondence indicating its newly understood responsibility for the transport facility for any tandem re-home. The industry letters that Verizon has submitted for a tandem re-home are silent on this point. The Cavalier contract proposal would make the compensation obligation clear. But if the Bureau disagrees with Cavalier's proposal, the Bureau should codify Verizon's proposal to provide cost-free transport between Cavalier's POIs and Verizon's tandem in Issue C2.

**Issue C3: Inter-Carrier Billing and Compensation**

In the apparent hope that Toto will leave Oz's curtain alone, Verizon's Brief continues to thunder, without explanation, the phrase "OBF Guidelines" to cut off inquiry into its intercarrier traffic responsibilities. Contrary to the testimony provided by Messrs. Cole, Haraburda, and Whitt, Verizon claims its routing of traffic complies with all industry standards. But while being compensated for separate access and local transiting functions, Verizon admittedly continues to mix access and local traffic together, without regard to how this adversely affects Cavalier, the terminating carrier. Verizon's testimony and Brief fail to cite a single "OBF Guideline" that justifies its populating an EMI data field with a phantom, undefined charge number.[12] Verizon fails to cite any "OBF Guideline" that frees Verizon to violate the express terms of its interconnection agreement with Cavalier.[13] Verizon fails to cite the "OBF Guideline" that justifies

[11] Tr. at p. 40, ll. 8-20.

[12] *See* Cavalier Brief at 15 (referencing Haraburda's description of the Focal Communications problem that resulted in 200,000 unaccountable minutes of usage).

[13] *See* Cavalier Brief at 11-13.

Verizon's masking (or "reoriginating") of access calls as local calls.[14] Verizon fails to cite the particular "OBF Guideline" that would allow Verizon to pass an access call to a CLEC's local trunks and bypass the meetpoint billing tape.[15] Rather, Verizon admitted at arbitration, and failed to explain away in its Brief, that Verizon follows the OBF Guidelines as it sees fit, peppering them with its own arbitrary rules and processes.[16]

Moreover, Verizon has failed to provide any assurance whatsoever that OBF will solve the problems of misrouting traffic and the passing of faulty billing data, nor did Verizon provide record evidence that OBF is actually grappling with those problems today.[17] Verizon's testimony and Brief failed to point to any evidence of OBF improvements upon the flawed Issue 1921 since Verizon's December 2001 memorandum to CLECs. Indeed, by its designation as "RESOLVED" and at "Final Closure" in 2000, the reasonable conclusion is that other issues have since taken OBF's attention.[18]

The Bureau should also give little weight to the paper threat that, should Cavalier prevail on this issue, it would "force Verizon to stop providing" transit services.[19] First, it is difficult to accept the premise that Verizon would walk away altogether from its transit service revenue source, especially in light of the Bureau's initial view, as expressed in the *Virginia Arbitration Order*, that transit services may not be subject to TELRIC pricing.[20] Moreover, the *Virginia Arbitration Order* specifically precluded Verizon from suddenly halting its transit services: "allowing Verizon to 'terminate' transit service abruptly, with no transition period or consideration of whether [the CLEC]

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[14] *See* Cavalier Brief at 13.
[15] *See* Cavalier Brief at 11-13.
[16] *See* Cavalier Brief at 14-15.
[17] *See* Verizon Brief at 6 (assertion without record support).
[18] *See* Cavalier Brief at 14-15.
[19] Verizon Brief at 6.
[20] *See Virginia Arbitration Order* at ¶117; *but see* 47 CFR §51.503. It follows that if a CLEC obtains tandem switching from Verizon as a UNE, tandem switching is available at TELRIC rates.

has an available alternative, would undermine [the CLEC's] ability to interconnect indirectly with other carriers in a manner that is inconsistent with the 'fundamental purpose'" of broad scale interconnection under section 251, would "put new entrants at a severe competitive disadvantage in Virginia, and would undermine the interests of all end users in connectivity to the public switched network."[21] Even were Verizon to decide to phase out of the transit service market, and were allowed by the FCC to do so,[22] there would be ample time to make other arrangements. Between the terms of the parties' pending interconnection agreement and other carriers' similar agreements, Verizon has contractually committed itself to provide transit services for years.[23] The Bureau should also note that, while Verizon suggests it might spurn tandem transit services, Verizon takes no such position with respect to access services.

The Bureau should also ignore Verizon's claim that Cavalier seeks to make Verizon its "billing intermediary" in supposed contravention of ¶119 of the *Virginia Arbitration Order*. The argument is startling, given that Verizon itself, in issue C4, is arguing to continue to perform a billing intermediary function.[24] Cavalier's continuing rejection of Verizon's longstanding offer, in Issue C4, to be Cavalier's billing

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[21] *Virginia Arbitration Order* at ¶118 ("allowing Verizon to 'terminate' transit service abruptly, with no. transition period or consideration of whether WorldCom has an available alternative, would undermine WorldCom's ability to interconnect indirectly with other carriers in a manner that is inconsistent with the 'fundamental purpose'" of broad scale interconnection under section 251 and "put new entrants at a severe competitive disadvantage in Virginia, and would undermine the interests of all end users in connectivity to the public switched network.").

[22] *See Virginia Arbitration Order*, at ¶117 (noting Commission has not yet "had occasion to determine whether incumbent LECs have a duty to provide transit service"). *See also* October 28, 2003 Ex Parte Letter to Secretary Dortch from US LEC, RCN Telecom Services, Starpower Communications, Focal Communications and Pac-West Telecom, Re: CC Docket No. 01-92 (responding to September 4, 2003 Verizon ex parte, in which the group urged the Commission to reject Verizon's position on its transit service obligations through its tandem switches).

[23] *See also Virginia Arbitration Order* at ¶¶115-118 (carriers have time allotted under contract, plus time as necessary for "best efforts", to negotiate and transition to other third party traffic arrangements).

[24] In Issue C4, Verizon wants to pass on third party charges to Cavalier. Cavalier objects. *See infra* Issue C4: Third-Party Charges.

intermediary. The incongruity can only be explained by Verizon's apparent position that it would become Cavalier's "billing intermediary" if directed to ensure that access traffic and local traffic pass through, respectively, access trunks and local trunks. That is nonsense. First, what MCIWorldcom sought, and which the Bureau rejected in *Virginia Arbitration Order*, was to turn Verizon into a true "billing intermediary" – *i.e.*, to "require[e] Verizon to bill and compensate WorldCom for transit traffic as though the traffic were exchanged between WorldCom and Verizon."[25] By contrast, Cavalier seeks to require Verizon to pass access and local traffic over the correct trunks, as the parties have already agreed; the only way Verizon can ensure this is to require all transiting carriers and carriers providing access to provide data identifying that carrier and the jurisdiction of the call.[26] Cavalier's evidence, as well as the admissions of Jonathan Smith, show both that substantial amounts of traffic are being misrouted to Cavalier and that significant levels of other traffic are all but impossible to identify as local or access.

Cavalier does not need a billing intermediary. Cavalier needs its access services and transit services performed competently. Whether or not Verizon must perform transit services or access services is ultimately irrelevant. Verizon is performing those services now, and Verizon is well compensated for doing so. Cavalier has a right to expect that, for such compensation, Verizon correctly route access traffic and local traffic and impose basic order upon the process. A failure rate of allowing some 17% of all transiting traffic to pass to Cavalier without adequate billing information is unsatisfactory and must be reformed.

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[25] *See Virginia Arbitration Order*, at 107.
[26] *See* Cavalier Brief at 14.

**Issue C4: Third-Party Charges**

In its Brief, Verizon argues it should become Cavalier's fully indemnified billing liaison[27] whenever Verizon is billed by third parties for termination of calls originated by Cavalier. Again, Cavalier has no need for Verizon as a billing intermediary. Verizon has little or no incentive to prevail in any billing dispute in which Cavalier, and not Verizon, would suffer the consequences of failed advocacy. Moreover, even insofar as Cavalier and Verizon might perform the same transiting services, Verizon's proposal unfairly mandates that Cavalier accept terms thereof, including indemnification of Verizon for losses and attorney's fees, while allowing Verizon the flexibility to decline the same obligation.

Rather, Cavalier believes the better proposal is a reciprocal commitment that, when either Verizon or Cavalier as the transiting party is billed by a third party for termination of the other party's calls, such transiting party shall pass on only properly imposed charges, *i.e.* those that have been sanctioned by the Commission or by a state commission. Cavalier thus urges the Bureau to award Cavalier's proposed §7.2.6.

**Issue C5: Reasonable Assistance with Direct Interconnection**

Contrary to the suggestion in the Verizon Brief, Cavalier has no need or wish for Verizon to negotiate Cavalier's interconnection and compensation arrangements with third parties. Rather, in Issue C5, Cavalier seeks reasonable and limited assistance for its own negotiations. Cavalier's need is also not met by a review of interconnection agreements on file at the SCC. Cavalier thus urges the Bureau to order the assistance described in Cavalier's proposed §7.2.8.

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[27] *See* Verizon Brief at 11 (Verizon's proposal would "*enable Cavalier to participate* [with Verizon] in disputing" termination charges billed by third party carriers, "but would make Cavalier ultimately responsible for the charges")(emphasis added).

According to the Bureau in the *Virginia Arbitration Order*, Worldcom unsuccessfully argued "that Verizon should incur the burdens of *negotiating interconnection and compensation arrangements* with third-party carriers."[28] Although Verizon is quick to accuse Cavalier of running afoul of ¶119 of the *Virginia Arbitration Order*,[29] Cavalier has no desire to relinquish its contract and payment negotiation role to the incumbent local telephone company.

Rather, as outlined in Cavalier's Brief, Cavalier and the third party carriers with which it negotiates have occasional needs for information that only Verizon has access to, or understands or both. It is no substitute, as Verizon suggests, for Cavalier simply to review interconnection agreements on file.[30] As Cavalier has noted, it is well aware of what should be happening in a carrier's billing relationship, but needs to know what is actually happening. An ICA will always be mute on that point.

Verizon also overplays its alleged confidentiality concerns. Typically the information sought will deal with one or the other of the negotiating parties, so confidentiality concerns would largely be waived. In the event the parties seek information relating to other parties, Cavalier recognizes that a confidentiality agreement might be produced and might result in the requesting company's seeking administrative or judicial assistance. But that relatively remote possibility should not torpedo the entire proposal.

Verizon also blithely states that one or the other party to an ICA negotiation can simply get the material sought from the other party.[31] This retort ignores that some data

[28] *Virginia Arbitration Order* at ¶119.
[29] Verizon Brief at 14.
[30] Verizon Brief at 14-15.
[31] Verizon Brief at 15.

is Verizon's alone. Moreover, a party taking a hard bargaining stance may not be forthcoming with such information. Suffice to say that Verizon is in the best position to have billing and like information readily available and should be directed by the Bureau to provide assistance to enhance more widespread direct interconnection.

### Issue C6: E 9-1-1

In its Brief Verizon fails to weaken Cavalier's argument for a reasonable solution to the current E 9-1-1 compensation regime that is unfair both to Cavalier and to the Public Safety Answering Points (PSAPs). Cavalier thus urges the Bureau to award Cavalier's proposed §§7.3.9 and 7.3.10, whether as a permanent or an interim solution.

Verizon first posits that Cavalier's proposal is inappropriate because "Cavalier wants Verizon to change its *retail* E 9-1-1 tariff".[32] Yet Verizon cites no authority for why this should be an "erroneous proposition".[33] The Commission itself indicated in the *Virginia Arbitration Order* that, as between a tariff provision and an interconnection agreement (ICA) clause, the ICA is controlling.[34] Thus, it is appropriate for Cavalier to advocate that Verizon amend its tariffs to the extent inconsistent with the ICA language that is negotiated or awarded.

Second, Verizon makes the seemingly insincere claim that Cavalier seeks to compel Verizon to advise the PSAPs of which services *Cavalier* is performing.[35] In the event Cavalier was unclear on this point, Cavalier envisions a joint effort in which

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[32]Verizon Brief at 16.
[33]*Id.*
[34] "Where the parties fail to agree, . . . and ask a state commission to set rates or resolve other issues relating to the interconnection agreement, a carrier cannot use tariffs to circumvent the Commission's determinations under section 252 or the right to federal court review under section 252(e)(6)." *Virginia Arbitration Order* at ¶602.
[35]Verizon Brief at 17.

Verizon advises the PSAPs of the services Verizon performs and Cavalier advises the PSAPs of the services Cavalier performs.

Further, contrary to Verizon's contention, Cavalier does not argue that Verizon's costs decrease "dollar for dollar" upon each customer's migration from Verizon to Cavalier.[36] Cavalier accepts that Verizon has certain fixed costs that would not necessarily decline upon a customer's being won back to Cavalier. But surely Verizon must concede Cavalier's assumption of services for those migrating customers as, *e.g.*, E 9-1-1-related database entry, relieves Verizon of the need to provide various functions and services.

This very question highlights why the Commission should adopt Cavalier's proposal. The PSAPs are justified in their need for transparency as to the E 9-1-1 services for which they pay. As the attached Affidavit of Martin W. Clift demonstrates, the PSAPs are generally uncertain about the division of labor between Verizon and Cavalier, and do not know whom they should pay and for what services.[37] The PSAPs should not be double-billed by or receive needlessly duplicative services from Cavalier and Verizon. Cavalier cannot unilaterally and adequately explain the services Verizon provides, nor can Verizon do so for Cavalier.

Finally, the Bureau should not be cowed by Verizon's drumbeat of complete and premature deferral to Virginia SCC Case No. PUC-2003-00103. As explained in the Cavalier Brief, it is uncertain "if, when, and how" that case will turn out.[38] Yet Cavalier has waited for a just result for years, and this issue is properly before the Bureau. On the

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[36] *See* Verizon Brief at 17 and 18.
[37] *See* Affidavit of Martin W. Clift, attached as Exhibit C6-2.
[38] Clift Direct Testimony at p. 9, ll. 11-15.

other hand, Verizon is in no way prejudiced by the instant proceeding, as it is free to advocate before the SCC regardless of how the Bureau views this issue. There is thus no good reason why the Bureau cannot or should not rule. Cavalier's proposal would provide a sensible interim solution, pending any broader changes ordered by the SCC in that case.[39]

## C9: Loops and xDSL Services

Verizon's response to Cavalier's requested changes to loop and xDSL language is largely one of compliance with past standards and reluctance to abandon the *status quo* or the least common denominator. For the reasons stated below, such arguments should be rejected, and Cavalier's limited proposals for change should be adopted.

### a. loops and the loop qualification database

Verizon first complains that Cavalier has deleted without explanation large portions of its loop qualification language.[40] After due consideration, Cavalier restored some of this language in § 11.2.12(A) and (B), to allow for use of Verizon's mechanized loop qualification database at Verizon's rates.[41] However, the remaining language sets forth a detailed and mandatory process linking mechanized and manual loop qualification processes. Verizon has not explained its purpose nor the full scope of its intended operation, and this language is therefore neither necessary nor appropriate.

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[39] Id. at p. 9, ll. 17-22.

[40] Verizon's Initial Brief at p. 20.

[41] See Cavalier's October 24, 2003 Notification of Subsequent Final Offers at p. 6, proposed language for § 11.2.12(A) and (B).

Verizon next complains that Cavalier deleted § 11.2.12(A) without having "adequately explained" its reasons.[42] The reason is simple: Cavalier proposes replacing this language with its proposed § 11.2.8(a), which defines a loop up to 30,000 feet in length, with load coils removed, and without any inappropriate spectral density mask limitations, that can be used to provide the types of xDSL service that Cavalier offers.[43]

Verizon also resists Cavalier's effort to remedy discriminatory situations in which customers cannot be qualified for Cavalier's xDSL service but can be qualified for competing services offered by Verizon.[44] Verizon argues that Cavalier is simply trying to evade line-and-station transfer charges,[45] but that is not the case. Such a contingency could be specifically carved out of the language proposed by Cavalier for § 11.2.13 of the parties' interconnection agreement. What Cavalier is seeking to avoid is discriminatory results from the loop qualification process itself. Although Verizon claims that Cavalier has offered no specific examples of such problems,[46] Cavalier's Exhibits C9-1 and C9-2 to Cavalier's Initial Brief illustrate the type of problems that can arise, and also show that other competitors have shared this concern. For these reasons, Cavalier urges the Bureau to adopt Cavalier's proposed § 11.2.13 as an incentive and deterrent needed to ensure non-discriminatory implementation and use of Verizon's loop qualification system.

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[42] Verizon's Initial Brief at pp. 21-22.

[43] On a related topic, of Verizon refusing to provide Cavalier with xDSL loops over 18,000 feet in length (Verizon's Initial Brief at p. 22), Cavalier notes that it has never been offered loops over that length with reasonable loop conditioning rates in the event that load coils or other impediments must be removed. Cavalier's proposed language on loop conditioning rates is an integral part of Cavalier's efforts to make the language insisted upon by Verizon more workable in terms of actually offering xDSL service.

[44] Verizon's Initial Brief at p. 25.

[45] Id.

[46] Id. at p. 26.

Finally, with respect to Issue V26, Cavalier maintains that any issues not raised by Cavalier in its August 1, 2003 Petition, and not specifically identified in Verizon's September 5, 2003 Response, were indeed foreclosed from the Bureau's consideration or waived by Verizon. Any such issues should be precluded from this arbitration.

For the reasons stated, the Bureau should reject Verizon's arguments and adopt Cavalier's proposed language on the various issues discussed above.

**b. xDSL loop maintenance**

Verizon's arguments about the xDSL loop maintenance interval are couched in terms of purported inconsistency with the Virginia performance assurance plan ("PAP"), with existing intervals for other CLECs, with the concept of a standardized interval for all CLECs, and with ease of reporting under the PAP.

None of these arguments address Cavalier's concern with customers who increasingly use xDSL loops for a mix of data and voice needs, in the same way as DS1 circuits are used.[47] The real-world concerns of such customers should be accommodated, even if that means making adjustments in, or allowing flexibility in, the PAP and Verizon's standard intervals. Verizon might even except maintenance on xDSL loops from PAP reporting. In any event, Cavalier does not seek favorable, discriminatory treatment compared to other CLECs. Rather, Cavalier seeks an improvement in the response time for its own customers and—to the extent that other CLECs opt into its agreement, or Verizon feels compelled to alter the PAP or its standard intervals—other customers as well.

[47] Direct testimony of Webb at Webb on behalf of Cavalier, at p. 2, ll. 1-16.

For these reasons, Cavalier requests that the Bureau reject Verizon's arguments on this point and instead adopt Cavalier's proposed changes to § 11.2.12(C).

**c. 4-wire DS1 loops**

Verizon has simply dodged the issue with 4-wire DS1 loops. As described by Cavalier's witness, Ms. Webb, Cavalier has had problems with the performance and reliability of 2-wire DS1-compatible loops, as opposed to 4-wire DS-1 compatible loops.[48] The fact that a four-wire interface is on both ends of each type of loop is irrelevant.

Cavalier has proposed a revised § 11.2.9 to enable it to order a 4-wire facility in between the four-wire interfaces, rather than a 2-wire facility. That solution would avoid needless maintenance hassles for Cavalier, Verizon, and Cavalier's end-user customers. Verizon proposes instead that Cavalier order 2-wire and 4-wire HDSL-compatible loop offerings,[49] However, Cavalier notes that Verizon makes no claim that it provisions DS1 circuits for its own retail customers in this way, or that it does not deploy 4-wire facilities for its own retail customers. Moreover, if Verizon prevails on its argument about xDSL loop maintenance intervals, then Verizon is proposing a lesser-quality facility for Cavalier to offer to its end-users.

Because of the performance and reliability concerns identified by Cavalier, the Bureau should reject Verizon's insistence on provisioning what it wants rather than what will function well, and instead adopt Cavalier's proposed language for § 11.2.9 of the parties' interconnection agreement.

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[48] Direct testimony of Webb at p. 1, ll. 14-17.

[49] Verizon's Initial Brief at pp. 26-27.

**d. spectral density mask limitations**

Verizon's contentions about spectral density mask limitations consist solely of conclusory statements that Verizon complies with national standards,[50] along with an unproductive exchange between Cavalier's counsel and Verizon's witness on this subject.[51] Cavalier disagrees with these contentions for the reasons stated in Cavalier's Initial Brief and in the rebuttal testimony of Kenneth Ko, who outlined the applicable national standards and the ways that Verizon's language fails to accommodate them. Principally, Cavalier's objection is that Verizon's proposed loop definitions tend to pigeonhole a CLEC into one of the spectrum management classes, without allowing for the "Method B," or analytical, means of qualifying a broadband technology.[52]

Verizon then asserts that "Cavalier appears to agree with most of Verizon's compromise language" for Cavalier's proposed § 11.2.8(a) of the interconnection agreement, but wants to extend the definition to loops less than 18,000 feet in length, as well as loops over that length.[53] Cavalier disagrees with Verizon's position for several reasons. First, Verizon alludes to "concerns that Cavalier raised at the hearing,"[54] when Cavalier raised its concerns with Mr. Ko's rebuttal testimony. Second, Cavalier has proposed a loop of up to 30,000 feet in length as part of § 11.2.8(a) since it filed its August 1, 2003 petition in this proceeding. Mr. Ko discussed both the initial and later

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[50] Verizon's Initial Brief at pp. 22-23.

[51] Id. at pp. 23-24.

[52] Rebuttal testimony of Ko at p. 3, ll. 7-20 (discussing importance of Method B in addition to spectrum management classes); id. at p. 4, l. 20 to p. 5, l. 9 ("[t]he loop types proposed [by Verizon], considered as a set, are significantly more restrictive with regard to spectral compatibility than either Method A or Method B as defined in T1.417-2001").

[53] Verizon's Initial Brief at p. 24.

[54] Id.

versions in his testimony.[55] It is only the potential presence of load coils over 18,000 feet that creates any taxonomic distinction based on loop length.

Most importantly, Cavalier disagrees with the position ascribed to it by Verizon because Verizon continues to impose arbitrary limits in its purported "compromise" language for § 11.2.8(a), and does not allow for the use of a Method B, analytical method for qualifying a technology like the ReachDSL equipment made by Paradyne Corporation and used by Cavalier. Cavalier merely wants to have a loop available, of any length, with load coils removed, to offer that technology in a manner consistent with the applicable standard, T1.417. Verizon continues to insist on more restrictive language.

For these reasons, Cavalier requests that the Bureau adopt its more open language proposed by Cavalier for §§ 11.2.4, 11.2.6, 11.2.7, 11.2.8, and 11.2.8(a), and reject the language proposed by Verizon.

**e. loop conditioning rates**

The choice for loop conditioning rates appears to have boiled down to the following three options: Cavalier's "lowest rate" proposal (most likely adopting Maryland's rates),[56] Verizon's approach (perhaps adopting New York rates, perhaps adopting something lower),[57] or the rates ultimately set in CC Dockets Nos. 00-218 and 00-251 in the arbitrations between Verizon and MCI/AT&T.[58]

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[55] Rebuttal testimony of Ko at p. 5, l. 12 to p. 6, l. 6.

[56] See marked-up pricing schedule at p. 175, part of Exhibit "B" to Cavalier's August 1, 2003 Petition in this proceeding.

[57] See Verizon's Initial Brief at p. 27 n. 2 and Exhibit 2, describing one rate as "NY rate" and rest as "Rate in an interconnection agreement that is equal to or lower than comparable rate in NY."

[58] Memorandum Opinion and Order, DA 03-2738, CC Dockets Nos. 00-218 and 00-251 (rel. Aug. 29, 2003), at ¶¶ 633 *et seq*.

Verizon argues that a Maryland rate cannot be imported,[59] notwithstanding its own reliance on mystery rates that are equal to or lower than New York rates. However, the only authority cited by Verizon is the Virginia 271 decision, and Verizon has argued with respect to its UNE DS1 rates that it is "inappropriate for anyone to rely on the record from the 271 Case to draw any conclusions about the TELRIC assumptions used to set our current UNE prices."[60]

Verizon also complains that "Cavalier has filed no cost studies" nor "submitted any evidence" to show that Verizon's rates are flawed.[61] However, the Virginia SCC has never set xDSL rates of any kind,[62] and Verizon has not provided any cost studies or other evidence beyond its "take it or leave it" offer of rates of purported New York lineage. For the first time in its Initial Brief, Verizon also argues that Cavalier cannot opt into the MCI/AT&T rates without adopting all of the "rates, terms and conditions that are legitimately related to the individual interconnection service or element."[63] While Verizon contends that Cavalier "is affirmatively asking the Commission for terms that are contrary to those in the *Virginia AT&T Agreement*,"[64] Verizon has not specified which of Cavalier's proposals present a departure from the MCI/AT&T terms for loops conditioning, in Verizon's opinion.

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[59] Verizon's Initial Brief at p. 27.

[60] Rebuttal testimony of Robert W. Woltz, Jr. in Virginia SCC Case No. PUC-2002-00088 (June 2003), at p. 8. A copy of Mr. Woltz's rebuttal testimony is attached as Exhibit C16-4 to this Reply Brief.

[61] Verizon's Initial Brief at p. 27.

[62] See Virginia SCC's April 15, 1999 Final Order in Case No. PUC970005 at pp. 12-13 (available at http://www.state.va.us/scc/caseinfo/puc/case/c970005d.pdf).

[63] Verizon's Initial Brief at p. 28 and p. 28 n. 3, quoting In re US Xchange of Indiana, LLC, 2002 WL 1059769 at ~5 (Ind. URC Mar. 13, 2002).

[64] Id. at p. 28.

Because Verizon seems to advance no argument for its own proposed rates beyond their apparent acceptance by perhaps one other CLEC, Cavalier urges the Bureau to adopt its own language for loop conditioning rates, applying the lowest comparable rate in the most closely comparable jurisdiction, and then adopting whatever rates emerge from the MCI/AT&T arbitration.

**C10: Dark Fiber Issues**

Reflecting its apparent dread of having become a dark fiber vendor,[65] Verizon has thrown up excuse after excuse for why the inquiry process should remain unhelpful, complex, and time-consuming. The Bureau should reject Verizon's position, as Cavalier has offered cost-effective, time-sensitive and efficient solutions that will benefit both Cavalier and Verizon. Accordingly, Cavalier urges the Bureau to select Cavalier's language with respect §§ 11.2.15.4.1, 11.2.15.4 and 11.2.15.5.

**i. Fiber Maps and Expanded Information on Inquiries**

The Bureau should reject Verizon's ivory tower arguments against providing fiber maps and expanded fiber information. Alternatively, the Bureau should award Cavalier a right to the type of dark fiber maps it has advocated (which is preferable) or a right to the expanded information on inquiries as proposed. In order to perform network design, Cavalier needs at least 1) fiber maps that show connectivity to other wiring centers or 2) the expanded responses on inquiries such that, with enough effort and multiple inquires, Cavalier can piece together a fiber map.

The type of fiber map Cavalier seeks could be as simple as a drawing with dots and straight lines defining the names of each wire center. This map would be easier to produce than the type Verizon currently offers, as Cavalier has no need for detailed

[65] *But see* Verizon Brief at 34.